

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local)	
Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation)	
Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

UNITED STATES TELECOM ASSOCIATION

PETITION FOR RECONSIDERATION AND CLARIFICATION

COMMENTS OF

ALEXICON TELECOMMUNICATIONS CONSULTING, INC.

Introduction

Alexicon Telecommunications Consulting, Inc. (Alexicon) hereby submits its Comments to the Federal Communications Commission (FCC or Commission) in response to the Petition for Reconsideration and Clarification filed by the United States Telecom Association (USTelecom) regarding the tribal government engagement obligation provisions of the Connect America Fund (*Petition*)¹, and in response to the Public Notice issued by the FCC's Office of Native Affairs and Policy (ONAP), Wireless Telecommunications Bureau (WTB), and the Wireline Competition Bureau (WCB) requesting comments on the *Petition*.²

Alexicon provides professional management, financial and regulatory services to a variety of small rate-of-return Incumbent Local Exchange Carriers (ILECs) who serve diverse geographical areas characterized by rural, insular or Native American Tribal Lands. These ILECs, similar to most other small rate-of-return regulated ILECs, currently provide a wide range of technologically advanced services to their customers. These companies, through participation in various State and Federal high cost funding programs, and with their continued investment in network infrastructure, are providing customers in rural, insular and Tribal areas with services equal to or greater than urban areas, and at comparable pricing. Furthermore, these ILECs have been committed to providing their customers with innovative solutions, by adapting technologies that fit rural America, including Broadband and IP-enabled services.

Alexicon opposes USTelecom's Petition to the extent it asks the Commission to weaken the Tribal Engagement provisions adopted in the *ICC/USF Order*³ in any way. The Commission's Tribal engagement rules, as expanded by the Public Notice issued by ONAP, WTB, and WCB that provided further guidance on the tribal government obligation provision of the Connect

¹ Petition for Reconsideration and Clarification of the United States Telecom Association, WC Docket No. 10-90, et al, filed August 20, 2012

² WC Docket No. 10-90, et al., Public Notice released August 27, 2012

³ Report and Order and Further Notice of Proposed Rulemaking In the Matter of Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109; and Universal Service Reform – Mobility Fund, WT Docket No. 10-208, released November 18, 2011 (*ICC/USF Order*)

America Fund⁴ are a reasonable framework under which Tribal governments and all Eligible Telecommunications Carriers (ETC) can work in order to ensure vital communications services reach all Native Nations.

Background

The Petition expands a previous petition filed by USTelecom⁵ regarding the FCC's adoption of Tribal engagement rules.⁶ In the instant case, USTelcom is also addressing, for the first time, the *Further Guidance*. Many of the issues are similar, and the common theme seems to be that USTelecom is advocating that a substantial number of ETCs (competitive) should not have to abide by the Tribal engagement rules, while ILECs in large part must abide by these same rules. Alexicon will demonstrate why USTelecom's position in this regard is unreasonable and should be rejected by the Commission.

I. Tribal Engagement Requirements Should Apply to All ETCs Currently Providing Service and Receiving Support

USTelecom asks the Commission to reconsider or clarify that the Tribal engagement requirements not apply to ETCs whose support is being eliminated or who receive no support targeted to Tribal areas.⁷ USTelecom further argues that the requirements should not apply to “carriers whose support is being eliminated.”⁸ Finally USTelecom opines that “[a]t a minimum, the Commission should reconsider or clarify that the Tribal engagement requirements – whether embodied in its rules or the *Further Guidance* – apply only to ETCs that receive new high-cost support to fund deployment on Tribal lands...”⁹ According to USTelcom, “new” support is limited to the Tribal Mobility and CAF Phase II funds. As a result, any ETC whose support is being eliminated, which would presumably include all wireless CETCs, would, in USTelcom's opinion, not engage the Tribal governments unless and until the CETC is receiving support from one of the aforementioned “new” mechanisms. Furthermore, implied in USTelecom's statement is ETCs who continue to receive support targeted to Tribal areas would be the only carriers

⁴ WC Docket No. 10-90, et al., Public Notice released July 19, 2012 (*Further Guidance*)

⁵ See Petition for Reconsideration of The United States Telecom Association, WC Docket 10-90, et al, filed December 29, 2011 at p. 17-19 (*1st Petition*)

⁶ *ICC/USF Order* at 636-637; 47 CFR 54.313(a)(9)

⁷ *Petition* at 4

⁸ *Ibid*

⁹ *Ibid*

expected to comply with the Tribal engagement rules. These ETCs are by and large limited to incumbent carriers, and of those incumbent carriers, most would be rural ILECs.

In the *ICC/USF Order*, the FCC states “...engagement between Tribal governments and communications providers either *currently providing* service or contemplating the provision of service on Tribal lands is vitally important to the successful deployment and provision of service.”¹⁰ The FCC is addressing the fact that 1) a “deep digital divide” exists between the Native Nations and the rest of the country; 2) “many residents of Tribal lands lack not only broadband access, but *even basic telephone service*”; and 3) there is “an essential role that Tribal consultation and engagement play in the successful deployment of service on Tribal lands.”¹¹ The FCC made it clear that the Tribal engagement policies adopted in the *ICC/USF Order* not only addressed broadband deployment on a prospective basis, but also currently provided basic voice and broadband service.

USTelecom’s argument fails on two fronts. First, USTelecom’s belief that the Tribal engagement rules, as expanded on and clarified by the *Further Guidance*, should apply only to ETCs who receive “new” support is unreasonable and contrary to clear FCC findings. Second, USTelecom’s position would create a regulatory imbalance in that CETCs serving Tribal areas, and who will continue to receive support, would not have to comply with Tribal engagement rules, while incumbent ETCs, who also continue to receive support, would have to comply.

The FCC clearly and consistently has stated that CETCs “whose support is being phased down will not be required to submit any of the new information or certifications...related solely to the *new broadband public interest obligations*, but must continue to submit information or certifications with respect to their provision of voice service.”¹² In addition, the FCC concluded that “it is reasonable to require competitive ETCs to comply with annual reporting obligations during their phase-down...”¹³ As stated above, the FCC adopted the Tribal engagement rules, in part, to address a lack of *basic telephone service*. Since CETCs will continue to receive support,

¹⁰ *ICC/USF Order* at 637 (emphasis added)

¹¹ *Id.*, at 636 (emphasis added)

¹² *Id.*, at 583 (emphasis added)

¹³ Connect America Fund, Third Order on Reconsideration, WC Docket No. 10-90, et al., (rel. May 14, 2012 at 8)

albeit pursuant to a phase-down schedule, related to voice, or basic telephone, service, it is clear that the FCC intends the Tribal engagement rules to apply to all carriers receiving support for serving Tribal areas.

Another implication of USTelecom's request to limit the applicability of the Tribal engagement rules is that they would then only be applicable to incumbent LEC ETCs. USTelecom clearly states that the Tribal engagement rules should only apply to ETCs that receive "new" high-cost support, and not to ETCs whose support is being eliminated. When this group of ETCs is carved out of the universe of reporting ETCs, all one is left with is incumbent ETCs that receive support today. Granted, USTelecom's position (as of now) anticipates carriers that, in the future, receive support for serving Tribal areas would be required to comply with the Tribal engagement rules. However, until then, only incumbent LEC ETCs would fall under the Tribal engagement requirements, resulting in a clear case of regulatory imbalance. Alexicon believes that the Tribal engagement rules, as enhanced and expanded by the *Further Guidance*, represent a good first step in ensuring Native Nations are properly served with quality voice and broadband services, and therefore all ETCs will benefit and should participate.

II. The Tribal Engagement Rules and Further Guidance Should be Affirmed by the Commission and Become Effective As Soon As Possible

Lost in USTelecom's Petition(s) is a discussion of whether the Tribal engagement rules are a reasonable way to help ensure vital communications services reach historically underserved Tribal areas. Instead, USTelecom complains that the Further Guidance was adopted without comment¹⁴ and without proper regard of the Paperwork Reduction Act (PRA) requirements¹⁵, among other things. Regardless of these concerns, Alexicon believes that the Tribal engagement rules and Further Guidance are a necessary first step in increasing the dialog between Tribal governments and entities that are receiving universal service or Connect America Fund support to bring vital services to the Native Nations.

First, USTelecom's argument that the *Further Guidance* was issued without consideration of the PRA is a bit of a red herring. The key component and purpose of the Tribal engagement rules

¹⁴ *Petition* at 6

¹⁵ *Id.*, at 14

and *Further Guidance* is to formalize what should have already been occurring – communication between Tribal governments and their communications providers. Indeed, “Tribal governments play a vital role in identifying and serving the needs and interests of their local communities, often in remote, insular, cyclically impoverished communities with a historic lack of critical infrastructure”¹⁶ and thus it is difficult to ascertain how ETCs have been effectively and efficiently serving Tribal areas without the type of dialog envisioned by the Tribal engagement rules and *Further Guidance*. Regardless, the Tribal engagement rules, and by extension the *Further Guidance*, are applicable outside of the PRA, a fact recently confirmed by the ONAP.¹⁷

Second, USTelecom’s assertion that the *Further Guidance* was adopted without notice and comment is another red herring. In this case, the Commission received adequate public comment¹⁸ and in fact opened a separate proceeding to investigate methods to improve communications services for Native Nations.¹⁹ In comments filed in that proceeding, the National Tribal Telecommunications Alliance (NTTA) provided detailed points on how to make communications between Tribal governments and ETCs more effective.²⁰ As is made clear by the *Further Guidance*, the assistance contained therein “intended to *facilitate* the required discussions between Tribal government officials and communications providers either currently providing or seeking to provide service on Tribal lands with the use of Universal Service Fund (USF) support.”²¹ The *Further Guidance* is therefore not another set of rules, but rather a document that compliments and clarifies an existing set of rules.

NTTA stated it succinctly – “the FCC is using the least drastic measure to bring...service to tribal customers.”²² NTTA was referring to the Tribal engagement rules, but the addition of the *Further Guidance* only enforces this point – all ETCs should already be engaging with Tribal governments in planning and providing services. The FCC simply adopted some formal rules,

¹⁶ *Further Guidance* at 16

¹⁷ See Ex Parte filing by JSI (September 10, 2012), Connect America Fund, WC Docket No. 10-90, et al., (unnumbered third page) wherein the ONAP, via JSI’s comment, explained “the PRA approval applies only to the obligation for ETCs to report as to how they have fulfilled the Tribal engagement requirement; it does not impact their responsibility to conduct the engagement.”

¹⁸ See *ICC/USF Order* at 636 and footnote 1049

¹⁹ In the Matter of Improving Communications Services for Native Nations, CG Docket No. 11-41

²⁰ See NTTA Comments, CG Docket No. 11-41 (filed June 20, 2011) at 29

²¹ *Further Guidance* at 1 (emphasis added)

²² NTTA Opposition to USTelecom’s 1st Petition (filed February 9, 2012) at 25

and the *Further Guidance* expanded on those rules, to make sure something happens that clearly has not been happening. Thus, it is beyond comprehension how ETCs would argue against something that clearly has benefit for all.

Conclusion

For the reasons above, Alexicon opposes USTelecom's Petition and requests the Commission further strengthen the Tribal engagement rules by adopting the *Further Guidance*. The Tribal Engagement rules, furthermore, should apply to all ETCs that receive support now or in the future.

Respectfully Submitted,

Alexicon Telecommunications Consulting, Inc.

September 26, 2012